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Clerk of the Board

California Air Resources Board

1001 I Street, Sacramento, California 95814

Submitted to: <http://www.arb.ca.gov/lispub/comm/bclist.php>

**IETA COMMENTS ON CALIFORNIA AIR RESOURCES BOARD'S
15-DAY PROPOSED AMENDMENTS TO CAP-AND-TRADE REGULATION
AND COMPLIANCE PROTOCOLS**

On behalf of the [International Emissions Trading Association](#) (IETA)¹, we appreciate this opportunity to provide comments to California Air Resources Board (ARB) during the 15-day period of [proposed amendments](#) to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, published on 2 October 2014². Our comments focus on ARB's proposed amendments to Corporate Disclosure Requirements and Compliance Offset Protocols, namely those related to the Ozone Depleting Substance (ODS), featured in ARB's *Notice of Public Availability of Modified Text and Availability of Additional Documents* and proposed amendments detailed in Attachments 1-4.

1. CORPORATE DISCLOSURE REQUIREMENTS

IETA recognizes and commends the highly constructive manner in which ARB Staff have recently engaged with business stakeholders on certain corporate disclosure rules and guidance. We welcome the open and frequent communications and overall cooperative spirit of Staff in helping to ensure that both the process and timing of ARB's modified corporate disclosure rules are workable for both local and international entities.

Non-Registered Direct Corporate Associations

In Section 95830(c)(1)(H) related to "Registration with ARB" ([Attachment 1](#)) of the proposed amendments, IETA welcomes the introduction of increased specificity on how entities must identify and disclose their non-registered direct corporate associations. We also support the additional flexibility that entities may choose to use related to the number of related entities that must be identified and disclosed, based on their relationship to California's Cap-and-Trade Regulation.

ARB has proposed changes governing the types of documentation that may be submitted to satisfy disclosure requirements in Sections 95830 and 85833. These modifications build on clarifications provided in the regulatory language released during ARB's 45-day comment period and include specific information filed with certain government entities, including the US Securities and Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC).

¹ IETA is an international business association representing over 140 leading international companies from across the carbon value chain. IETA has extensive experience with greenhouse gas market-based trading programs worldwide, including compliance allowance and offset programs. www.ieta.org

² Board's adoption of [Resolution 14-31](#)² directed ARB Staff to "consider additional modifications to the proposed amendments to the Cap-and-Trade Regulation as part of a subsequent 15-Day rulemaking package".

IETA supports these changes and appreciates the added clarity and flexibility. However, we also believe that ARB should consider accepting other regulatory filings. For example, some IETA members belong to corporate families subject to securities regulation in Canada rather than by the SEC. These entities (and/or their affiliates) file, under oath, documentation regarding their corporate organization in similar detail to that required by Exhibit 21 of the Form 10-K submitted to the SEC. **We request that ARB expand the acceptable disclosure list to include such filings or, through supportive guidance, indicate that such filings are acceptable to satisfy the disclosure requirements of 95830(c)(1)(H) – provided these are submitted to a regulatory body and contain materially similar attestations and information regarding corporate affiliations as in the specified filings.**

Investigations' Attestation & Guidance Document

IETA appreciates that ARB recently published [guidance documentation](#) related to auction application attestation disclosure requirements in accordance with 95912(d)(4)(E) of the Cap-and-Trade Regulation. However, IETA is very concerned about the breadth of ARB attestation requirements as adopted, and we are disappointed about the lack of proposed changes during the current 15-day modification period. Even with proposed improvements on how entities must identify and disclose their non-registered direct corporate associations, the challenging and onerous auction investigation attestation rules **will prevent a number of major California compliance entities from participating in the November auction and potentially beyond.**

Larger companies, especially those involved in regional and global fuel markets, are simply not in a position to obtain the investigations' information required in ARB's auction attestation, even on a "best efforts" basis. The impact this corporate disclosure attestation language has on a number of our members could affect their ability to cost-effectively comply with regulations. This is unlikely to be ARB's intention (i.e., to prohibit entities from being able to procure allowances via auction to cover their obligations), but could be a direct consequence of the regulation as currently written.

IETA strongly encourages ARB to fashion disclosures related only to entities that participate in the cap-and-trade market. We encourage ARB to consider a more reasonable approach to attestation requirements **as implemented by numerous regulatory agencies across various markets.** In these cases, rather than requiring full disclosure for registrant and related entities of all allegations and investigations in a market (and all related markets), the registered entity must only report final orders, decisions, findings or sanctions that have been imposed against the registered entity for violating rules or regulations, which are specific and **applicable** to the behavior the agency is interested in monitoring (e.g., consumer protection, market manipulation, etc.).

For example, under "Disclosures", ARB's revised attestation could state the following:

- Has the registrant, or any of the general partners, or corporate officers or directors, or limited liability company members, managers, and officers, ever been convicted of any felony? *Response Options: (No) or (Yes). If yes, explain on additional page.*
- Within the last 10 years, has the registrant or any of these persons had any civil, criminal, or regulatory sanctions for market manipulation imposed against them pursuant to any state or federal law or regulation? *Response Options (No) or (Yes). If yes, explain on additional page.*

2. COMPLIANCE OFFSET PROTOCOLS

IETA welcomes many of the proposed changes to ARB's compliance offset protocols in the Proposed 15-Day Modifications package. However, we are confused about ARB's proposed changes to the ODS protocol **sub-chapter 3.8** (Regulatory Compliance) and discrepancies with Cap-and-Trade Regulation provisions; a concern that also speaks to a more general, yet critical, market concern about discrepancies across Regulation provisions and protocols.

In March 2014, the Board approved new regulatory compliance language in California's cap-and-trade regulation. The amended language, which came into effect on 1 July 2014, emphasizes the importance of a *direct relationship* between regulatory compliance and the offset project. **Section 95973(b) on regulatory compliance** reads as follows (emphasis added):

"...an offset project must also fulfill all local, regional, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period. An offset project is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements for the entire Reporting Period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the Reporting Period"³.

In adopting the amended 95973(b), we believe that ARB took an important step towards more clearly defining that offset project activities (across all compliance offset projects, including ODS destruction) must comply with environmental, health, and safety requirements that are *directly applicable to the offset project* and that non-compliance events must result from an enforcement action levied against the project activities⁴. For all compliance offset protocols – including ODS - IETA believes that the areas of a project which are subject to ARB compliance regulatory language should be **narrowly defined to those activities directly applicable to the offset project**.

ARB's 15-day proposed amendment (underlined below) to Section 3.8 of the ODS protocol reads:

"The regulatory compliance requirements for a project apply to the collection, recovery, storage, transportation, mixing, and destruction of ODS, including disposal of the associated post-destruction waste products. The regulatory compliance requirements extend to the destruction facility during the time ODS destruction occurs."

This proposed protocol revision would only partially correct the prevailing uncertainty regarding the definition of regulatory compliance for an offset project. And this uncertainty has been at the center of ARB's investigation of the offset credits associated with the Clean Harbors facility.

³ ARB (August 2014) *Final Amended Cap-and-Trade Regulations, Section 95973(b), Pages 260-261*

⁴ This stance was further supported by ARB in its May 2014 "Final Statement of Reasons" (FSOR) accompanying the regulatory revision, in which the FSOR states that "regulatory conformance is intended to be limited to (offset) project activities"⁴.

We therefore suggest the following revisions (in bold) for both clarity and consistency regarding the given regulatory language in the ODS protocol:

*“The regulatory compliance requirements for a project apply to the collection, recovery, storage, transportation, mixing, and destruction of ODS, including disposal of the associated post-destruction waste products that are directly applicable to the ODS destruction project activities. The regulatory compliance requirements **in this section apply to the incinerator and any other unit or operation at the destruction facility, directly related to the destruction activities, during the time ODS destruction occurs.**”*

More generally, a growing concern for IETA members is that the Cap-and-Trade Regulation’s invalidation provision (95985) refers to compliance, but has little to no clear relationship with the Regulation’s compliance provision (95973) or the compliance protocol. Looking beyond the 15-day comment period, **we encourage ARB to more strongly and clearly link regulatory invalidation and compliance provisions in the Cap-and-Trade Regulation.** Such an improvement would ensure that any invalidation is directly related to the project and would create a unified and clear set of rules for project developers and verifiers.

In Conclusion

IETA appreciates the opportunity to record our comments related to ARB’s proposed 15-day modifications to the cap-and-trade regulation and compliance offset protocols. IETA remains committed to supporting the design and growth of a fully-functional, linkable California carbon market to help achieve the goals of AB 32 in a robust and economically efficient manner.

If you have any questions, or further clarification is required, please do not hesitate to contact IETA’s North American Director, Katie Sullivan, at sullivan@ieta.org.

Sincerely,



Dirk Forrister
IETA President and CEO

ABOUT IETA

IETA is dedicated to the establishment of market-based trading systems for greenhouse gas emissions that are demonstrably fair, open, efficient, accountable, and consistent across national boundaries. IETA has been the leading voice of the business community on the subject of emissions trading since 2000. Our 140 member companies include some of California’s, and the world’s, largest industrial and financial corporations—including global leaders in oil & gas, mining, power, cement, aluminum, chemical, pulp & paper, and investment banking. IETA also represents a broad range of global leaders from the industries of: data verification and certification; brokering and trading; offset project development; legal and advisory services. More information about IETA, including its current regional and global membership and partner network, is available at www.ieta.org.